REMARKS

The Section 102 Rejection

Claim 1 was rejected under 35 U.S.C. 102(e) as being anticipated by Bandini et al. (hereinafter "Band", US Patent Publication 2005/0081059 A1). Band relates to a relay

5   that provides message filtering services to an e-mail network. The relay monitors incoming communication and intercepts e-mail messages. The relay applies a policy to received messages to determine whether a message should be delayed. The relay applies a policy to delayed messages by reference to a delayed processing event which triggers the delayed processing. The relay updates policy data in accordance by employing an

10   update module. The relay then restricts the delivery of messages having attributes close to those of harmful data as provided by a policy database.

The Office Action asserted that:

As per claim 1, Band discloses a method for reducing the cost of sending messages over an intermittent network of computing devices via one or more
15   communication channels, the method comprising the steps of:
(a) creating a first message on a first device, the message intended to be sent to a second device over the network via at least one channel (paragraphs [0025-0027], Band teaches users of user stations sending emails via email server to recipients over
20   local and public networks);
(b) applying a first policy containing one or more rules to determine whether to send the first message to the second device, each rule being a function of one or more messaging attributes of messages, channels or the system environment (paragraphs [0011, 0028, 0035, 0043]. Band teaches an email relay used to apply
25   filtering policies to incoming electronic messages to prevent certain messages such as SPAM from being sent to recipients. The filters are applied to various parts of the message);
(c) dynamically updating the first policy by sending a second message to the first device, the second message being a system message that results in the addition,
30   deletion or other modification of the rules contained in the policy (paragraphs [0016-0018, 0045, 0053], Band teaches providing updates to the policy to maintain the most current information such as the latest virus while causing modifications to current policies).

35   Applicants respectfully traverse the rejection. Before responding to the rejection, Applicant takes the opportunity to address the problem being solved to put the invention in context. The invention enables computing devices (including devices acting as clients,

servers or both) using intermittent networks to have the same quality of service as traditional LAN-based transactional systems but doing so in a much more efficient manner. It also addresses the challenges of using multiple networks that have different costs associated with them. In order to achieve these objectives, one embodiment is to use

5   current distributed transactional processing theories and rework the sequence diagrams so that each step of the process is self contained and does not depend on holding on to a constantly connected network in order to receive the acknowledgements. The use of asynchronous messaging with the once-and-only-once policy is the underlying infrastructure for the system. Therefore, a device using an intermittent network can send

10   a message and once it is assured that it has been received on the other end, it does not need to keep the connection open. The method involves the assignment of a queue for each user/device, a queue for each server application, and a set of system queues for audit and exemption handling. By automatically creating these queues, the system makes it very simple and straightforward for any entity to create transactional applications without

15   a lot of knowledge about messaging or transactions.

Here, Band fails to disclose applying a first policy to reduce the cost of sending messages over the intermittent network of computing devices, the first policy containing one or more rules to determine whether to send the first message to the second device, each rule being a function of one or more messaging attributes of messages, channels or

20   the system environment.

Moreover, Band fails to show dynamically updating the first policy by sending a second message to the first device, the second message being a system message that results in the addition, deletion or other modification of the rules contained in the policy

to reduce the cost of sending messages over the intermittent network of computing devices.

In contrast, Band address spam problems and has nothing to do with an efficient transmission of data in an intermittent medium such as wireless medium. Band provides a delivery delay and the delayed data packages are maintained in a quarantine storage area until a policy is applied to the data packages. The application of the Band policy to the delayed data packages is determined by reference to a delay processing module. Band is not about reducing the cost of sending messages over an intermittent network. In fact, Band points to the opposite direction, as spamming prefers networks that are continuously connected rather than intermittently connected.

Since at least two elements are missing in the independent claim, Band cannot anticipate claim 1 as well as those dependent therefrom. Withdrawal of the Section 102 rejection is requested.

The Section 103 Rejection

Claim 2 was rejected under 35 U.S.C. 103(a) as being unpatentable over Bandini et al. (hereinafter "Band", US Patent Publication 2005/0081059 A1) in view of Morris (US Patent 7,028,075).

Morris relates to a system and method for sharing digital images over a network, such as the Internet, wherein the first person desires to send images from a first computer to a second person having a second computer that includes a standard email program. The system and method include sending an email request with the images and an address of the second user from the first computer to a server. In response to receiving the email request, the images are stored on the server, and the server creates a standard email

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message from the email request. The method and system further include inserting at least one link to the stored images into the email message, and transmitting the email message over the network for delivery to the second user. The second user may then receive and open the email message on the second computer using the standard email program and

5   click on the at least one link to display the images.

The Office Action noted that "Band does not explicitly disclose wherein the first device is a server device and the second device is a client device. The use and advantage of such feature is well-known to one of ordinary skill in the art as evidenced by Morris (column 3, lines 64-67, column 4, lines 25-30, column 5, lines 34-36,42-45)."

10   First, as discussed above, Band fails to show (b) applying a first policy to reduce the cost of sending messages over the intermittent network of computing devices, the first policy containing one or more rules to determine whether to send the first message to the second device, each rule being a function of one or more messaging attributes of messages, channels or the system environment; and (c) dynamically updating the first

15   policy by sending a second message to the first device, the second message being a system message that results in the addition, deletion or other modification of the rules contained in the policy to reduce the cost of sending messages over the intermittent network of computing devices.

Morris does not show the claim as amended either. Hence, neither Band nor

20   Morris can render claim 2 obvious.

To summarize, with respect to the rejection of claim 1, in the absence of any teachings about applying a first policy to reduce the cost of sending messages over the intermittent network of computing devices, the first policy containing one or more rules

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to determine whether to send the first message to the second device, each rule being a function of one or more messaging attributes of messages, channels or the system environment or dynamically updating the first policy by sending a second message to the first device, the second message being a system message that results in the addition,

5   deletion or other modification of the rules contained in the policy <u>to reduce the cost of sending messages over the intermittent network of computing devices</u>, neither Band nor Morris can render claim 2 obvious. Further, the suggestion to combine the two to arrive at the claimed invention arises from hindsight as taught by the instant application. Per MPEP 706.02(j): Contents of a 35 U.S.C. 103 Rejection:

10   To establish a prima facie case of obviousness, three basic criteria
                must be met. First, there must be some suggestion or motivation, either
                in the references themselves or in the knowledge generally available to
                one of ordinary skill in the art, to modify the reference or to combine
                reference teachings. Second, there must be a reasonable expectation of
15   success. Finally, the prior art reference (or references when combined)
                must teach or suggest all the claim limitations. The teaching or
                suggestion to make the claimed combination and the reasonable
                expectation of success must both be found in the prior art and not based
                on applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438
20   (Fed. Cir. 1991). See MPEP Section 2143 - Section 2143.03 for
                decisions pertinent to each of these criteria.

                The initial burden is on the examiner to provide some suggestion of the
                desirability of doing what the inventor has done. "To support the
25   conclusion that the claimed invention is directed to obvious subject
                matter, either the references must expressly or impliedly suggest the
                claimed invention or the examiner must present a convincing line of
                reasoning as to why the artisan would have found the claimed invention
                to have been obvious in light of the teachings of the references." Ex
30   parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). See
                MPEP Section 2144 - Section 2144.09 for examples of reasoning
                supporting obviousness rejections.

        As discussed above, there is no suggestion to modify Band to arrive at the

35   invention as claimed. There is no reasonable expectation of success since the needs of

spam control differs from the needs of sharing digital image in Morris. Finally, Morris or

Band does not teach or suggest all the claim limitations in the independent claims as well

as each dependent claims. Since the teaching or suggestion to make the claimed

combination and the reasonable expectation of success is not found in Morris or Band,

5   there is an inference that it came from Applicants' disclosure. Thus, neither Morris nor

Band can render obvious the independent claim and those claims dependent therefrom.

Moreover, they are allowable since neither Band nor Morris shows the specifics as

recited in the dependent claims.

Applicant points out that the Examiner bears the initial burden of factually

10   establishing and supporting any *prima facie* conclusion of obviousness. *In re Rinehart*,

189 U.S.P.Q. 143 (CCPA 1976); M.P.E.P. § 2142. If the Examiner does not produce a

prima facie case, the Applicant is under <u>no</u> obligation to submit evidence of

nonobviousness. *Id.* In the instant case, the Examiner has not pointed to <u>any</u> evidence in

Morris, or how knowledge of those skilled in the art, provide a suggestion or motivation

15   to modify the reference Band teaching so as to produce the claimed invention of (a)

creating a first message on a first device, the message intended to be sent to a second

device over the network via at least one channel; (b) applying a first policy <u>to reduce the</u>

<u>cost of sending messages over the intermittent network of computing devices, the first</u>

<u>policy</u> containing one or more rules to determine whether to send the first message to the

20   second device, each rule being a function of one or more messaging attributes of

messages, channels or the system environment; and (c) dynamically updating the first

policy by sending a second message to the first device, the second message being a

system message that results in the addition, deletion or other modification of the rules

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contained in the policy <u>to reduce the cost of sending messages over the intermittent</u>

<u>network of computing devices</u>. See *In re Zurko*, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001)

([I]n a determination of patentability …. the Board cannot simply reach conclusions

based on its understanding or experience - or on its assessment of what would be basic

5   knowledge or common sense. Rather, the Board must point to some concrete evidence in

the record in support of these findings).

     Under *Vaeck*, absent any evidence of a cited suggestion or reasonable motivation

in the Whitesides reference, or knowledge of those skilled in the art, for modifying Chen

to arrive at claims 1 and 21 and claims that depend therefrom, *prima facie* obviousness of

10   these claims has not been established. As such, it is respectfully requested that the §

103(a) rejection of all claims be withdrawn and the claims be allowed.

     Applicant submits that Band and Morris cannot render independent claim 1

obvious. Further, claims that depend from the independent claims are also patentable.

     Applicant submits that all claims in the case, as amended, are in condition for

15   allowance. If the Examiner believes a telephone conference would expedite prosecution

of this application, please telephone the undersigned at 408-528-7490.

Respectfully submitted,

Bao Tran

Bao Tran
20   Reg. No. 37,955